Information on posting of drivers in the transport sector

In accordance with transitional provisions of Directive (EU) 957/2018, namely Article II, par. 5 of the Act no. 285/2020, Coll., the rules for posting of workers that were valid until 30 July 2020, available below, shall apply to posted drivers in the road transport sector:

According to the legal regulations of the Czech Republic, the posting of employees pursuant to Directive 96/71/EC is governed, in particular, by Act No. 262/2006 Sb., the Labour Code, as amended (hereinafter referred to as the "Labour Code"), and Act No. 435/2004 Sb. on employment, as amended (hereinafter referred to as the "Employment Act"). Generally applicable collective agreements within the meaning of Article 3(8) of Directive 96/71/EC which would be applicable to posted workers do not currently exist in the Czech Republic.

I. Administrative obligations relating to posting workers in the Czech Republic

a) The reporting requirement (Section 87 of the Employment Act)

Drivers posted in the road transport sector are *exempt* from the reporting obligation, i.e. their posting *need not be reported* to the relevant regional branch of the Labour Office.

b) The record-keeping obligation (Section 102(3) of the Employment Act)

A foreign employer posting workers in the Czech Republic pursuant to Directive 96/71/EC is obliged to keep records of such persons as containing the following data: identification data of the employee; address in the country of residence and delivery address; number of travel document and name of the authority which issued it; the type of work, the place of work and the period during which the employment should be performed; the sex of such natural persons, the date of taking up duties and the date of ending the work or posting within the territory of the Czech Republic.

c) The obligation to have a copy of the employment contract translated into Czech at the workplace (Section 136(2) of the Employment Act)

An employer posting its employee in the Czech Republic is obliged to have copies of documents proving the existence of an employment relationship at the workplace, in that the documents which fulfil this obligation must be translated into Czech (an authenticated translation is not required, but the content of the translation must correspond to the original and must be comprehensible; documents in Slovak language are also accepted).

This obligation also applies to posted workers in the road transport sector; the cabin of the vehicle is considered to be the workplace. In the road transport sector, the compliance with this obligation may be inspected based on the Act no. 111/1994, Coll., the Road Transport Law (hence, in accordance with Section 35c of the Act no. 111/1994, Coll., a pecuniary security may be collected from hauliers suspected of committing an infringement).

A fine of up to CZK 500,000 may be imposed for failure to comply with this obligation (Sections 139 and 140 of the Employment Act).

II. Working conditions

If posting an employee from another EU Member State to work within the bounds of the trans-national provision of services within the territory of the Czech Republic, the regulation of the Czech Republic applies to such an employee pursuant to Section 319 of the Labour Code on the condition that this is more favourable for that employee as far as the following are concerned:

(a) maximum working hours and minimum rest periods;

(b) the minimum period of holiday time in a calendar year or the pro rata part thereof;

(c) the minimum wage, the relevant lowest guaranteed wage and additional payment for overtime work;

(d) occupational health and safety,

(e) the working conditions of pregnant workers, workers who are breastfeeding and workers until the end of the ninth month after childbirth and of juvenile workers;

(f) equal treatment of workers and non-discrimination;

(g) working conditions for agency employment.

Favourability is assessed separately for each right arising from the employment relationship. The provisions on the minimum period of holiday time in a calendar year or the pro rata part thereof and the minimum wage, the relevant minimum guaranteed wage and additional payment for overtime work do not apply when an employee is posted to work on the trans-national provision of services in the Czech Republic for not longer than 30 days in total in a calendar year. This does not apply if the employee is posted to work as part of the trans-national provision of services by an employment agency.

A person to whom an employee has been sent by an employer established in another Member State of the European Union to perform work within the bounds of the trans-national provision of services within the territory of the Czech Republic guarantees the payment of a wage or salary up to the amount set out in Section 319(2)(c) if the remuneration for work up to the amount set out in Section 319(2)(c) was not paid by the posting employer to the posted employee, the posting employer has also been fined in accordance with the relevant provisions of Act No. 251/2005 Sb. on labour inspection and, at the same time, the person to whom the employee was posted could have known of the failure to pay remuneration had it invested the requisite care.

a) Set weekly working time

The set weekly working time is **40 hours per week**. For an employee under 18 years of age, the length of the shift must not exceed 8 hours per day and the length of the weekly working time must not exceed 40 hours per week in aggregate in more than one basic employment relationship. For employees:

• working underground in the mining of coal, ores and minerals, in mining construction and at mining operations at geological research workplaces, and employees working three-shift and continuous working hours, **37.5 hours per week**;

• working a two-shift work regime, **38.75 hours per week**.

The maximum length of a shift is 12 hours.

The employer is obliged to give the employee **a break from work of at least 30 minutes for food and rest** after a maximum of 6 hours of continuous work. This break shall not be provided at the beginning or at the end of working time and is not counted as working time.

b) Overtime work

Overtime work may only be done in exceptional cases. Overtime work ordered on an employee **may not exceed 8 hours per week** and **150 hours** per calendar year. Beyond this, the employer may require overtime work only when the employee agrees. The total amount of overtime may not exceed an average of more than 8 hours per week over a period which may not exceed 26 consecutive weeks. Only a collective agreement can define this period to a maximum of 52 consecutive weeks.

Overtime work and remuneration

An employee who is employed and remunerated with a wage is entitled to the wage and a bonus of at least 25 % of average earnings for overtime work, unless he/she agrees that the employer will provide compensatory leave to the extent of overtime work done instead of a bonus. **The employer is always obliged to pay the wage.**

An employee who is employed and remunerated with a salary is entitled to the portion of the pay tariff, a personal and special additional payment and additional payment for work in a difficult working environment pertaining to 1 hour of work without overtime work in the calendar month in which the overtime is worked per hour of overtime work and an additional payment of 25 % of the average hourly earnings and, in the case of days of continuous rest in a week, an additional payment of 50 % of the average hourly earnings, unless the employer and the employee agree on the provision of compensatory leave instead of overtime pay. The salary is not reduced for the duration of compensatory leave.

c) Rest time

Between the end of one shift and the beginning of the next shift, employees are entitled to a continuous rest period of at least 11 hours within 24 consecutive hours, employees under 18 years of age at least 12 hours within 24 consecutive hours. This rest period may be reduced to up to 8 hours within 24 consecutive hours for employees over 18 years of age provided that the subsequent rest period is extended by the period of shortening. Such shortening is only possible in continuous operations, in the case of unevenly-scheduled working time and in the case of overtime work, in agriculture, in the provision of services to the public (e.g. catering, telecommunications and postal services), urgent repair work required to avert danger to the life or health of employees and in the case of natural disasters and other similar extraordinary cases. In the case of seasonal work in agriculture, the shortened period of rest may be replaced during a period of 3 weeks after shortening.

The employee is also entitled to an uninterrupted period of rest of at least 35 hours in a week. Uninterrupted weekly rest may not be less than 48 hours for a juvenile employee. This uninterrupted weekly rest period may be reduced to up to 24 hours for employees older than 18 years of age under the conditions laid down in the Labour Code, provided that the employee is provided with an uninterrupted rest period in a week so that the length of this rest period is a total of at least 70 hours

over a 2-week period. In agriculture, a longer period of time is allowed by law to provide a compensatory rest period when this has been shortened.

d) Holiday time

Holiday time in a calendar year and a pro rata portion thereof

The Labour Code provides employees with the right to holiday time in a calendar year, or a pro rata portion thereof, holiday time for days worked and additional holiday time. The Labour Code provides employees with a minimum of **4 weeks** of holiday time in a calendar year (5 weeks for the employees of employers set out in Section 109 (3) of the Labour Code and 8 weeks for teachers and academics at institutions of higher education). An employee who has worked for the same employer for at least 60 days in a calendar year during an uninterrupted period of employment is entitled to holiday time in the calendar year, or a pro rata portion thereof if the employment did not last continuously for the whole calendar year. A day on which the employee works the predominant part of his/her shift is considered to be a day worked; parts of shifts worked on different days are not aggregated. The pro rata portion of holiday time shall be one twelfth of holiday time for the calendar year for each full calendar month of continuous duration of the same employment relationship.

Holiday time for days worked

An employee who is not entitled to holiday time for a calendar year or a pro rata portion thereof because he/she has not worked for the same employer for at least 60 days in the calendar year is entitled to holiday time for days worked of one-twelfth of the holiday time for the year for each 21 days worked in the relevant calendar year.

Additional holiday time

Additional holiday time is a right which is independent of holiday time for the calendar year or holiday time for days worked and is only granted, under the specified conditions, to employees who work the whole of the calendar year for the same employer underground in the extraction of minerals or in digging tunnels or galleries and to employees who execute particularly difficult work throughout the year. Particularly difficult work is defined by the Labour Code (e.g. work with infectious materials, exposure to adverse effects of ionizing radiation, etc.). Such employees are entitled to additional holiday time of 1 week in a calendar year (full additional holiday time). If an employee works under these conditions for only a part of the calendar year, he / she is entitled to 1/12 of the additional holiday time (a pro rata portion of additional holiday time) for every 21 days thus worked. The exception here, when the right to a pro rata portion of additional holiday time does not arise after 21 days have been worked, is working in tropical or otherwise medically-difficult areas, when the employee must always first meet the requirement of working continuously in such areas for which he/she is entitled to full additional holiday time for at least 1 year, and only once that employee has worked continuously in those areas for more than one year is he/she entitled to 1/12 of additional holiday time for each 21-day period thus worked.

Employees are entitled to compensation of a wage or salary for the period of drawing holiday time in the amount of average earnings. Employees whose working time is unevenly distributed over individual weeks or over the whole calendar year may be compensated by a wage or salary equal to the average earnings corresponding to the average length of the shift.

Employees are entitled to compensation of a wage or salary for holiday time which they do not draw only in the event of termination of employment. It is not possible to provide compensation of a wage for additional holiday time which is not drawn; such holiday time must always be taken, preferentially.

e) Remuneration

Minimum wage

As of 1 January 2020, the basic minimum wage rate for a set weekly working time of 40 hours is **CZK 14,600** per month, or **CZK 87.30** per hour. In determining the minimum wage, overtime pay and additional pay for work on public holidays, for night work, for work in a difficult working environment and for work on Saturdays and Sundays are not included.

Guaranteed wage

In addition to the minimum wage, the Czech legal system also uses a guaranteed wage, which is understood to be the wage or salary to which the employee is entitled under the Labour Code, contract, internal regulation, wage assessment or salary assessment. The lowest level of the guaranteed wage and the conditions for its provision to employees whose wage is not agreed in a collective agreement (higher-level, in-house) and for employees who are paid a salary for work are laid down by **Government Regulation No. 567/2006 Sb**. on the minimum wage, on the lowest levels of the guaranteed wage, on the definition of a difficult working environment and on the level of wage supplements for work in a difficult working environment, as amended. The cited government regulation states that the lowest guaranteed wage is equal to the base rate of the minimum wage, whereby the next lowest guaranteed wage level is set differently according to the complexity, responsibility and laboriousness of the work carried out, assigned to 8 categories so that the highest (eighth) category of guaranteed lowest level of monthly and hourly wages is twice that set for the first category of work. General characteristics of individual categories of work and examples of classification of work in these categories are set out in the Annex to the above-mentioned Government Regulation. This regulation ensures for employees that their work must be valued with at least the wage that is set as the lowest permissible for the relevant category of work, depending on its complexity, responsibility and laboriousness.

From 1 January 2020, the amounts of the lowest guaranteed wage levels for a set weekly working time of 40 hours are as follows:

ATTENTION:

There were several increases in the minimum wage since then.

The amounts of the lowest guaranteed wage were also increased (see section II(c) of the current version of the *Posting of Workers website*)

If the remuneration for work does not reach at least the minimum wage or the relevant minimum guaranteed wage level, the employer is obliged to provide the employee with a supplement. Similarly as in the case of the minimum wage, an employee's wage, when compared to the relevant

lowest guaranteed wage level, does not include overtime pay and additional pay for work on a public holiday, for night work, for work in a difficult work environment and for work on Saturday and Sunday.

f) Protection of health, safety and hygiene at work

The employer is obliged to ensure the occupational health and safety of employees at work with respect to the risks of possible danger to their life and health as relating to the performance of work.

During a period of temporary assignment of an employee of an employment agency to work for a user, it is **the user** that creates favourable working conditions and ensures occupational safety and health at work. The user is obliged to provide the employees of employment agencies **with sufficient and adequate information and instructions** on occupational health and safety, in particular by familiarising them with the risks and the results of the risk assessment and with measures to protect against the effects of these risks, as concerning their work and workplace.

If employees of two or more employers perform tasks at one workplace, the employers **are obliged** to inform each other, in writing, about risks and the measures taken to provide protection from the effects of these, as relating to the work and the workplace, and to cooperate in ensuring occupational safety and health for all employees at the workplace. Subject to a written agreement between the participating employers, the employer authorised by this agreement coordinates the implementation of measures to ensure the occupational health and safety of employees and the procedures involved in ensuring them.

The employer (user) is obliged to prevent risks, to ensure the provision of first aid, to provide initial and periodic training, etc. **The costs associated with ensuring safety are borne by the employer and may not be passed on to the employee**. The worker has the right to information about the risks associated with the work, the right to training in complying with safety regulations, the right of discussion, the right to be examined by a doctor before doing work and to subsequent preventive medical examinations, the right to personal protective equipment, the right to refrain from doing work when there is an immediate threat to health, the right to ask questions of the employer, the right to complain to the employer, the right to contact the competent administrative (supervisory) authority, etc.

An employer at which an occupational injury has occurred is obliged to clarify the causes and circumstances of the accident, with the participation of the employee if the employee's medical condition permits, with the participation of witnesses and with the participation of the trade union organisation and the occupational health and safety representative. The Labour Code imposes a number of obligations on employers in relation to occupational injuries, including those with regard to recording them and informing the subjects concerned. More detailed obligations of the employer are set out in an implementing legal regulation, namely Government Regulation No. 201/2010 on the method of recording accidents, reporting and sending a record of an accident.

Obligations are mainly imposed by the Labour Code, Act No. 309/2006 Sb. and other implementing regulations.

g) Pregnant workers, breastfeeding workers and working mothers to the end of the ninth month after childbirth.

It is forbidden to employ workers in jobs that endanger maternity. A list of work that is **prohibited** for the above-mentioned employees is stipulated in Decree of the Ministry of Health No. 180/2015 Sb. In

the event that such an employee is doing work that she is not allowed to do or which, according to a medical opinion, threatens her pregnancy or maternity, the employer is obliged **to transfer** her to other work.

The employer is obliged **to inform** such (female) workers if exposure to risk factors affecting the foetus in the mother's body is possible at work, is obliged to inform them of the risks and possible effects of these on pregnancy, breastfeeding or their health and to take the required steps, including steps to reduce the risk of mental and physical fatigue and other types of mental and physical stress associated with the work being done, for as long as is necessary to protect their safety or the health of the child. The employer is obliged to adapt premises at the workplace in which they can rest. If such women work at night (they work at least three hours between 10 pm and 6 pm within a shift at least once a week), the employer is obliged to transfer them to other work if they so request.

In addition, a pregnant worker may not be used for overtime work.

h) Working conditions for children and juveniles

Children are generally prohibited from performing work, with the exception of artistic, cultural, sporting and advertising activities under the conditions laid down by Act No. 435/2004 Sb. on employment.

A person who has reached the age of 15 and who has completed compulsory schooling may commit him/herself to work. A juvenile employee (an employee under the age of 18) may only be employed with work that is adequate to his/her physical and intellectual development. It is prohibited to employ juvenile employees for overtime work, underground work in the mining of minerals or digging out tunnels and galleries and the work specified in Decree of the Ministry of Health No. 180/2015 Sb., which lays down the conditions under which a juvenile employee may, in exceptional cases, do such work. **Night work** may only be done by a juvenile employee in exceptional cases and only for one hour if necessary for his/her vocational training. It is prohibited to employ juvenile employees with work in which they are exposed to an increased risk of injury or whose execution could seriously endanger the safety and health of other natural persons. Juvenile employees must be examined by an occupational health service provider before an employment relationship is established, before being transferred to other work and regularly at least once a year. A juvenile employee must be given **a break for food and rest after a maximum of 4.5 hours** of continuous work and at least 12 hours of rest must be provided between shifts. Moreover, a juvenile employee must have a continuous period of rest of at least 48 hours in a week.

i) Equal treatment for men and women and other provisions on non-discrimination

Any discrimination is prohibited in labour relations. Employers are obliged to ensure equal treatment of all employees with regard to their **working conditions, remuneration** for work and the provision of other monetary performance and cash-value performance, professional training and the opportunity to achieve functional or other advancement in employment.

The basic sources of anti-discrimination legislation are Act No. 198/2009 Sb., the Anti-discrimination Act, and the Labour Code.

III. How to exercise your rights?

In the event that the employer or user does not comply with the obligations imposed on it by the law, a complaint may be filed with Státní úřad inspekce práce (State Labour Inspection Office) (http://epp.suip.cz/epp/index_light.php).

If the employer has failed to pay a wage or salary to the posted employee, that employee may, in addition to the procedure of private law, i.e. calling on the employer to pay the outstanding wage or salary and subsequently bringing an action before the court in the home state, use the possibility embedded in Section 319(3) of the Labour Code, under which the payment of a wage or salary up to the level of the minimum wage, the relevant lowest guaranteed wage level and additional payments for overtime work shall be guaranteed for the posted employee by the person (beneficiary of the service) to whom he/she was posted pursuant to a concluded contract to perform the tasks arising from that contract, under the conditions further specified in the relevant provision of the Labour Code,

- the fact that remuneration for work to the level of the minimum wage, the relevant minimum guaranteed wage level and additional payments for overtime work has not been paid by the employer;
- a fine has been lawfully and finally imposed on a trans-national employer for an offence pursuant to Section 13(1)(b) or Section 26(1)(b) of Act No. 251/2005 Sb. on labour inspection, as amended;
- the person knew of or should have, when investing the requisite care, been aware of failure to provide remuneration.

If the actual duration of the execution of work is not proven, the posted worker shall be deemed to have performed the work for 3 months.

Where discrimination or breach of the rights and obligations arising from the right to equal treatment has occurred, the person concerned has the right to demand at court that such discrimination be discontinued and that the consequences of discriminatory action be remedied and that he/she is provided with adequate satisfaction. It is also possible to contact the district labour inspectorate.

IV. Any further questions?

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